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J.C. PENNEY CORPORATION, INC.

16 UNITED STATES DISTRICT COURT  
17 CENTRAL DISTRICT OF CALIFORNIA

18 ROCK FIT, LLC, a Delaware limited  
19 liability company,

20 Plaintiff,  
21 vs.

22 J.C. PENNEY CORPORATION, INC.,  
23 a Delaware corporation, and  
24 DOES 1-5, inclusive,

25 Defendant.

26 And Related Counterclaims

27 Case No. CV 11-6377 SVW (Ex)

28 Assigned to The Honorable  
Stephen V. Wilson

**[PROPOSED] STIPULATED  
PROTECTIVE ORDER**

26 Rock Fit, LLC and J.C. Penney Corporation, Inc. assert that they may  
27 possess confidential information in the form of trade secrets or other confidential  
28 business, personal and/or technical information related to the subject matter of this

1 litigation. The parties recognize that it may be necessary to disclose certain of the  
2 asserted confidential information during the course of this litigation. As a result,  
3 the parties desire limiting disclosure and preventing use of such information for  
4 purposes other than the prosecution and defense of this action. In addition, the  
5 parties contemplate that non-parties may produce confidential information.  
6 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the parties hereby  
7 stipulate and agree to the request for, and entry of, the following Protective Order  
8 (hereinafter, "Order").

9 **1. DEFINITIONS.**

10 a. ***“Designated Material”*** shall mean any Discovery Material designated  
11 by a Producing Party as CONFIDENTIAL INFORMATION or ATTORNEYS'  
12 EYES ONLY INFORMATION, which comprises or contains information that the  
13 Producing Party claims in good faith to constitute or relate to trade secrets under  
14 applicable law, or confidential and proprietary information, such as, without  
15 limitation, (i) research and development information (including, for example,  
16 market and demographic research, and product and advertising development), (ii)  
17 commercial information (including, for example, business plans, business  
18 strategies, negotiations, and license agreements), (iii) financial information  
19 (including, for example, budgeting, accounting, costs, sales figures and advertising  
20 expenditures), (iv) business relationship information (including, for example,  
21 information pertaining to potential and/or existing customers, competitors,  
22 suppliers, distributors, affiliates, subsidiaries, and parents), (v) personnel  
23 information (including, for example, compensation, evaluations and other  
24 employment information), and (vi) patent prosecution information (including, for  
25 example, present or future patent applications).

26 b. ***“Discovery Material”*** shall mean any Document (as defined below),  
27 material, item, testimony, or thing filed with or presented to the Court or produced,  
28 served, or generated during the discovery process, including, for example, exhibits,

1 answers to interrogatories, responses to requests for admissions, responses to  
2 requests for production, subpoenas, declarations, affidavits, and deposition  
3 testimony or transcripts, and all copies, extracts, summaries, compilations,  
4 designations, and portions thereof.

5       c.     ***“Document”*** shall mean every means of recording any form of  
6 communication or representation upon any tangible thing, including letters, words,  
7 pictures, sounds, or symbols, or combinations thereof, whether recorded by  
8 handwriting, printing, photostatic or photographic means, magnetic impulse, tape,  
9 computer disk, CD-ROM, or any other form of data storage, data compilation, or  
10 mechanical or electronic recording, and all other tangible things which come  
11 within the meaning of “writings” or “recordings” contained in Rule 1001 of the  
12 Federal Rules of Evidence, or within the meaning of “document” or “tangible  
13 thing” contained in Rule 34 of the Federal Rules of Civil Procedure.

14       d.     ***“Producing Party”*** shall mean any party to this action or any third  
15 party, including its counsel, retained experts, directors, officers, employees, or  
16 agents, who produces any Discovery Material for this action, or one who  
17 designates any Discovery Material produced by another party or third party.

18       e.     ***“Receiving Party”*** shall mean any party to this action, including its  
19 counsel, retained experts, directors, officers, employees, or agents, who receives  
20 any Discovery Material.

21       **2. CATEGORIES OF DESIGNATED MATERIAL.**

22       a.     ***Categories.*** Any Producing Party or party may mark Designated  
23 Material as: (a) “CONFIDENTIAL INFORMATION”; or (ii) “ATTORNEYS’  
24 EYES ONLY INFORMATION,” if the Producing Party claims in good faith that  
25 the Designated Material is of such an extremely sensitive nature that the disclosure  
26 of such Designated Material to a Receiving Party would result in competitive or  
27 other business injury to it. The parties agree to not use the designation  
28 “ATTORNEYS’ EYES ONLY INFORMATION” for purposes of harassing the

1 Receiving Party or for purposes of unnecessarily restricting the Receiving Party's  
2 access to information concerning the lawsuit.

3       **b. Scope.** The scope of this Order shall be understood to encompass not  
4 only Designated Material which is expressly designated as CONFIDENTIAL  
5 INFORMATION or ATTORNEYS' EYES ONLY INFORMATION, but also any  
6 information copied therefrom, and all copies, excerpts, and summaries thereof, as  
7 well as testimony and oral conversations which reveal that information.

8       **c. Additional Categories.** The parties may agree to add additional  
9 categories of Designated Material (in addition to CONFIDENTIAL  
10 INFORMATION and ATTORNEYS' EYES ONLY INFORMATION) from time  
11 to time as necessary. If the parties cannot resolve the issue of whether this Order  
12 should be amended to include the proposed new category of Designated Material,  
13 the dispute may be submitted to the Court by motion or otherwise. Disclosure of  
14 the Discovery Material, however, shall still be made, but with the highest level of  
15 confidentiality available under this Order, pending resolution of the objection by  
16 the parties or the Court, as the case may be.

17       **3. PROCEDURE FOR MARKING DESIGNATED MATERIAL.**

18       Marking Designated Material as CONFIDENTIAL INFORMATION or  
19 ATTORNEYS' EYES ONLY INFORMATION shall be made by the Producing  
20 Party in the following manner:

21       **a. Production.** In the case of documents or any other tangible thing  
22 produced, designation shall be made by placing the legend "CONFIDENTIAL  
23 INFORMATION" or "ATTORNEYS' EYES ONLY INFORMATION" on each  
24 page of the document, and in case of a tangible thing, on the cover, the packing or  
25 in any other prominent place on the subject tangible thing, prior to production of  
26 the document or tangible thing;

27       **b. Inspection.** In producing original files and records for inspection, no  
28 marking need be made by the Producing Party in advance of the inspection. For

1 the purposes of the inspection, all documents made available for inspection shall be  
2 considered as marked "ATTORNEYS' EYES ONLY INFORMATION."  
3 Thereafter, upon selection of specified documents for copying by the Receiving  
4 Party, the Producing Party shall mark as "CONFIDENTIAL INFORMATION" or  
5 "ATTORNEYS' EYES ONLY INFORMATION" the copies of such documents as  
6 may contain confidential information at the time the copies are produced to the  
7 Receiving Party; and

8       c. ***Deposition Testimony.*** In the case of deposition testimony,  
9 transcripts or portions thereof, designation shall be made by the Producing Party  
10 either (i) on the record during the deposition, in which case the portion of the  
11 transcript of the designated testimony shall be bound in a separate volume and  
12 marked "CONFIDENTIAL INFORMATION" or "ATTORNEYS' EYES ONLY  
13 INFORMATION" by the reporter, as the Producing Party may direct, or (ii) by  
14 captioned, written notice to the reporter and all counsel of record, given within  
15 fourteen (14) calendar days after the reporter sends written notice to the deponent  
16 or the deponent's counsel that the transcript is available for review, in which case  
17 all counsel receiving such notice shall be responsible for marking the copies of the  
18 designated transcript or portion thereof in their possession or control as directed by  
19 the Producing Party or deponent. Pending expiration of the fourteen (14) calendar  
20 days, all parties and, if applicable, any third party witnesses or attorneys, shall treat  
21 the deposition transcript as if it had been designated "ATTORNEYS' EYES  
22 ONLY INFORMATION." No person shall attend the designated portions of such  
23 depositions, unless such person is an authorized recipient of Designated Material  
24 under the terms of this Order.

25       4. **CONTESTING THE DESIGNATION.**

26       a. ***No Waiver.*** No party to this action shall be obligated to challenge the  
27 propriety of any designation by any Producing Party, and a failure to do so shall  
28

1 not constitute a waiver or in any way preclude a subsequent challenge in this or  
2 any other action to the propriety of such designation.

3       b. ***Objection.*** Any party may contest a claim of confidentiality. Any  
4 party objecting to the designation of any Discovery Material as Designated  
5 Material, such as CONFIDENTIAL INFORMATION or ATTORNEYS' EYES  
6 ONLY INFORMATION, must give outside counsel of record for the Producing  
7 Party written notice of its reasons for the objection. Failing resolution after service  
8 of the written notice of its reasons for the objection, the party objecting may, on a  
9 duly noticed motion, seek an order changing or removing the designation. In the  
10 resolution of such matter, the burden of establishing confidentiality shall be on the  
11 party who made the claim of confidentiality, i.e., the Producing Party, but  
12 information designated as CONFIDENTIAL INFORMATION or ATTORNEYS'  
13 EYES ONLY INFORMATION shall be deemed as such until the matter is  
14 resolved.

15       **5. RESTRICTION ON DISCLOSURE AND USE.**

16       a. ***Confidentiality.*** Designated Material and the information derived  
17 from such Designated Material (excluding information which is derived lawfully  
18 from an independent source) shall be kept confidential and shall not be given,  
19 shown, made available, discussed, or otherwise communicated in any manner,  
20 either directly or indirectly, to any person not authorized to receive the information  
21 under the terms of this Order.

22       b. ***Maintenance of Designated Material by the Receiving Party.***  
23 Designated Material shall be maintained by the Receiving Party at a location and  
24 under circumstances to ensure that access is limited to those persons entitled to  
25 have access under this Order.

26       c. ***Maintenance of Designated Material by the Producing Party.*** A  
27 Producing Party is free to do whatever it desires with its own Designated Material.  
28

1                   **6. ACCESS TO DESIGNATED MATERIAL.**

2                   a. *Access to Material Designated “ATTORNEYS’ EYES ONLY*  
3                   **INFORMATION.** Designated Material marked “ATTORNEYS’ EYES ONLY  
4                   INFORMATION” shall be available only to the following persons subject to the  
5                   terms of paragraph 7:

6                   (i) Outside counsel of record to any party in connection with this  
7                   action, and the outside counsel’s partners, associates and employees;

8                   (ii) Judges, Magistrate Judges, law clerks, and clerical personnel of  
9                   the Court before which this action is pending or qualified court reporters;

10                   (iii) Approved consultants or experts, excluding employees, officers  
11                   or directors of a named party, retained by any of the parties or their counsel of  
12                   record to consult or testify in the case;

13                   (iv) Authors or drafters, addressees, and those who received the  
14                   documents or information prior to the commencement of this action, or during this  
15                   action, only if obtained independent and outside of this action and not in violation  
16                   of this Order;

17                   (v) Third party contractors and their employees involved in  
18                   document management or copying services for this litigation;

19                   (vi) Graphics or design services retained by counsel for a party for  
20                   purposes of preparing demonstratives or other exhibits for deposition, trial, or other  
21                   court proceedings in this action;

22                   (vii) Jury or trial consulting services retained by a party in this  
23                   action;

24                   (viii) Persons who have been retained by a party to provide  
25                   translation or interpretation from one language to another; and

26                   (ix) Mock jurors retained by a party in this action, excluding  
27                   individuals who are officers, directors, or employees of a named party, or owners  
28                   of any interest in a named party.

1                   **b. Access to Material Designated "CONFIDENTIAL**  
2 **INFORMATION."** Designated Material marked "CONFIDENTIAL  
3 INFORMATION" shall be available only to:

10 7. CONDITIONS ON ACCESS TO DESIGNATED MATERIAL.

11       a. ***Consultants, Experts, and Approved Designees.*** Prior to a Receiving  
12 Party giving, showing, disclosing, making available or communicating Designated  
13 Material to any expert or consultant under paragraph 6(a)(iii), the party shall:

1 disclosed to the intended recipient, unless and until such time as a further notice is  
2 given to the Producing Party in the manner set forth in this paragraph, specifying  
3 any additional Designated Material to be disclosed.

4 (iii) Include with such notice, a copy of the Acknowledgment of  
5 Protective Order, in the form shown in Exhibit A, which is attached hereto, signed  
6 by the expert or consultant and including all the information to be completed  
7 therein.

8 (iv) The Producing Party shall be entitled to object to such  
9 disclosure to the designee, expert or consultant within seven (7) calendar days after  
10 receipt of the Acknowledgment of Protective Order by stating specifically in  
11 writing the reasons why such designee, expert or consultant should not receive the  
12 Designated Material.

13 (v) The parties shall meet and confer within seven (7) calendar  
14 days after the Producing Party serves its objection, for the purpose of attempting to  
15 resolve the objection.

16 (vi) If the objection is not resolved by the parties, the Producing  
17 Party must file and serve a motion to prevent disclosure within ten calendar (10)  
18 days after such meet and confer, otherwise, the Producing Party shall be deemed to  
19 have withdrawn its objection.

20 (vii) In any motion before the Court, the Producing Party shall bear  
21 the burden of showing the need for confidentiality and the grounds for its  
22 objection. No disclosure of Designated Material shall be made to the proposed  
23 designee, expert or consultant until the parties resolve the matter, the objection is  
24 withdrawn, or the Court permits such disclosure.

25 (viii) The filing and pendency of objections shall not limit, delay, or  
26 defer any disclosures of Designated Material to persons as to whom no such  
27 objection has been made, nor shall it delay or defer any other pending discovery,

1 unless the level of confidentiality bears directly on the objecting party's ability to  
2 conduct such discovery.

3       b. Authorization and Acknowledgment. Each person hereof (excluding  
4 Judges, Magistrate Judges, law clerks, and clerical personnel of the Court before  
5 which this action is pending or qualified court reporters) to whom Designated  
6 Material is to be given, shown, disclosed, made available or communicated in any  
7 way, shall first execute an Acknowledgment of Protective Order in the form shown  
8 in **Exhibit A**, agreeing to be bound by the terms of this Order, acknowledging that  
9 Designated Material is subject to this Order, that the person is authorized under  
10 paragraphs 6(a)-(b) to receive Designated Material marked as CONFIDENTIAL  
11 INFORMATION or ATTORNEYS' EYES ONLY INFORMATION, that the  
12 person has read this Order, that such person agrees to comply with, and be bound  
13 by, this Order, and that such person is aware that contempt sanctions may be  
14 entered for violation of this Order. Counsel to whom Designated Material is  
15 produced shall keep in his or her files an original of each such executed  
16 Acknowledgment of Protective Order until sixty (60) calendar days after the final  
17 termination of this action. Upon final termination of this action and at the written  
18 request of the Producing Party, all such executed agreements shall be provided to  
19 outside counsel for the Producing Party.

20       **8. PROCEDURES FOR FILING PAPERS WITH DESIGNATED  
21 MATERIAL.**

22       Designated Material may be included with, or referred to in, papers filed  
23 with the Court where this case is now pending or in any other court only in  
24 accordance with the following procedures:

25       a. ***Designated Material.*** The Designated Material must be filed pursuant  
26 to L.R. 79-5.

27       b. ***Papers Including Designated Material.*** All papers filed with the  
28 Court, including but not limited to pleadings and memoranda of law, which include

1 all or any portion of information set forth in Designated Material must be filed  
2 under seal in accordance with the terms and procedures set forth in this Order,  
3 including the procedures for filing materials set forth above in paragraph 8(a).  
4 Counsel for the party filing papers with Designated Material shall be responsible  
5 for designating all papers filed with the Court as Designated Material and marked  
6 as CONFIDENTIAL INFORMATION or ATTORNEYS' EYES ONLY  
7 INFORMATION depending on the contents of the papers being filed. Such papers  
8 shall be subject to the terms of this Order.

9 **9. REDACTED FILINGS OF PAPERS WITH DESIGNATED  
10 MATERIAL.**

11 Redacted versions of papers with Designated Material filed under seal may  
12 be filed with the Court in accordance with normal procedures and made publicly  
13 available provided that:

14 a. All Designated Material set forth in the papers is deleted or obscured  
15 and all Designated Material is removed as exhibits; and

16 b. Redacted versions of the papers are clearly marked "Public Version –  
17 Confidential Material Omitted." Redacted versions of the papers also must clearly  
18 identify each place where information or exhibits have been deleted.

19 **10. PROCEDURE FOR DISCLOSURES TO OTHER PERSONS.**

20 If it becomes necessary for a Receiving Party's outside counsel to seek the  
21 assistance of any person, other than those persons referred to in paragraph 6, and to  
22 disclose Designated Material to such person to properly prepare this litigation for  
23 trial, the following procedures shall be employed:

24 a. Outside counsel of the Receiving Party shall notify, in writing, outside  
25 counsel for the Producing Party, stating therein the specific Designated Material to  
26 be disclosed and the name, address and position of the person(s) to whom such  
27 disclosure is to be made;

1                   b.     If no objection to such disclosure is made by outside counsel for the  
2 Producing Party within ten (10) calendar days of such notification, outside counsel  
3 for the Receiving Party shall be free to make such disclosure to the designated  
4 person(s); provided, however, that outside counsel for the Receiving Party shall  
5 serve upon outside counsel for the Producing Party, prior to disclosure, an  
6 Acknowledgment of Protective Order in the form shown in **Exhibit A**, whereby  
7 such person agrees to comply with and be bound by this Order. The  
8 acknowledgment shall be retained by outside counsel for the Receiving Party, and  
9 distributed upon final disposition of this action as set forth in paragraph 15 below.

10                   c.     If, within ten (10) calendar days, the outside counsel for the Producing  
11 Party objects, in writing, to such disclosure, no disclosure shall be made, except by  
12 order of the Court upon a regularly noticed motion brought by the Receiving Party.  
13 Before filing such a motion, outside counsel for the Receiving Party shall meet and  
14 confer with outside counsel for the Producing Party in a good faith effort to resolve  
15 their differences.

16                   d.     Any party moving for such an order requesting disclosure shall  
17 explain why the requested disclosure is appropriate, but the Producing Party shall  
18 bear the burden of justifying the confidentiality designation and explaining the  
19 harm that would result from the requested disclosure.

20                   **11. UNINTENTIONAL FAILURE TO DESIGNATE.**

21                   If, through inadvertence, a Producing Party provides any Designated  
22 Material pursuant to this litigation without designating and marking the Designated  
23 Material as **CONFIDENTIAL INFORMATION** or **ATTORNEYS' EYES ONLY**  
24 **INFORMATION**, the Producing Party may subsequently inform the Receiving  
25 Party of the confidential nature of the disclosed Designated Material, and the  
26 Receiving Party shall treat the disclosed Designated Material as **CONFIDENTIAL**  
27 **INFORMATION** or **ATTORNEYS' EYES ONLY INFORMATION** upon receipt  
28 of written notice from the Producing Party. Disclosure of such Designated

1 Material to persons not authorized to receive that material prior to receipt of the  
2 confidentiality designation shall not be deemed a violation of this Order.  
3 However, in the event the material has been distributed in a manner inconsistent  
4 with the categorical designation, the Receiving Party will take the steps necessary  
5 to conform distribution to the categorical designation, *i.e.*, by retrieving all copies  
6 of the Designated Material, or notes or extracts thereof, in the possession of the  
7 persons not authorized under this Order to possess such Designated Material and  
8 advising the person to whom disclosure was made that the material is confidential  
9 and should be treated as provided in the Order.

10 **12. UNINTENTIONAL DISCLOSURE OF PRIVILEGED**  
11 **INFORMATION.**

12 Counsel shall exert their best efforts to identify documents or material  
13 protected by the attorney-client privilege or the work-product doctrine prior to the  
14 disclosure of any such documents or material. If, however, a party unintentionally  
15 discloses documents or material that is privileged or otherwise immune from  
16 discovery, the party shall, within seven (7) calendar days upon discovery of the  
17 disclosure, so advise the Receiving Party in writing, request the documents or  
18 material be returned, and attach a privilege log with an entry pertaining to the  
19 documents or material that is privileged or otherwise immune from discovery. If  
20 that request is made and the privilege log provided, no party to this action shall  
21 thereafter assert that the disclosure waived any privilege or immunity. It is further  
22 agreed that the Receiving Party will return or destroy the inadvertently produced  
23 documents or material, and all copies and derivations, within seven (7) business  
24 days of the Receiving Party's receipt of a written request for the return of the  
25 documents or material. The cost, if any, for excising such documents or materials  
26 by the Receiving Party shall be borne by the Producing Party. The Receiving Party  
27 having returned the inadvertently produced documents or material may thereafter  
28 seek production of the documents or material in accordance with the Federal Rules

1 of Civil Procedure. To the extent that any such inadvertently produced information  
2 was used, included, referenced or summarized in a pleading, deposition or other  
3 proceeding, in good faith, before a request for the return of the unintentionally  
4 produced information, nothing in this paragraph shall require a Receiving Party to  
5 purge, redact or excise any such information.

6 **13. INFORMATION NOT COVERED BY THIS ORDER.**

7 The restrictions set forth in this Order shall not apply to information which is  
8 in the possession of or otherwise known to the Receiving Party or the public before  
9 the date of its transmission to the Receiving Party, or which lawfully comes into  
10 the possession of or becomes known to the Receiving Party or lawfully comes into  
11 the possession of or otherwise becomes known to the public after the date of its  
12 transmission to the Receiving Party, provided that such information does not  
13 become publicly known by any act or omission of the Receiving Party which  
14 would be in violation of this order.

15 **14. RESPONSIBILITY OF ATTORNEYS.**

16 Outside counsel of record shall be responsible for providing a copy of this  
17 Order to all persons entitled access to Designated Material under paragraph 6 and  
18 to employ reasonable measures to control duplication of, access to, and distribution  
19 of copies of materials so designated. No person shall duplicate any Designated  
20 Material except, as contemplated by this Order, for use as exhibits at depositions,  
21 in connection with court filings or, as necessary, by counsel, experts or consultants  
22 approved under paragraphs 6 and 7 for use as working copies. All copies, extracts  
23 and translations must be appropriately marked and are subject to paragraph 15 of  
24 this Order.

25 **15. FINAL DISPOSITION.**

26 Upon termination, settlement or final judgment of this litigation including  
27 exhaustion of all appeals, the originals and all copies of Designated Material shall  
28 be either destroyed or turned over to the Producing Party, or to their respective

1 outside counsel, within sixty (60) calendar days. However, retained counsel may  
2 retain pleadings, attorney work product, consultant work product, and deposition  
3 transcripts for archival purposes. If Designated Material is destroyed pursuant to  
4 this paragraph, outside counsel for the Receiving Party shall provide to outside  
5 counsel for the Producing Party a certification identifying when and how the  
6 destruction was performed. The provisions of this Order insofar as it restricts the  
7 disclosure, communication of, and use of Designated Material produced hereunder  
8 shall continue to be binding after the conclusion of this action.

9

10 **16. DISCLOSURE OF DESIGNATED MATERIAL AT TRIAL OR**  
11 **PRE-TRIAL HEARINGS.**

12 This Order governs only discovery. At trial or on appeal, the parties will  
13 redesignate or redact confidential designations as deemed appropriate.

14 **17. REFERENCE TO THIS ORDER AT TRIAL.**

15 No reference may be made at the trial in this action in the presence of a jury  
16 to the existence of this Order or to the effect that certain material is subject to this  
17 Order.

18 **18. NO LIMITATION OF OTHER RIGHTS.**

19 This Order shall be without prejudice to the right of any party to oppose  
20 production of any information on any and all grounds other than confidentiality.

21 **19. RELEASE FROM OR MODIFICATION OF THIS ORDER.**

22 This Order is entered without prejudice to the right of any party to apply to  
23 the Court at any time for additional protection, or to release, rescind, or modify the  
24 restrictions of this Order, to determine whether a particular person shall be entitled  
25 to receive any particular information or to seek relief from inadvertent disclosure  
26 of privileged or work-product information. This Order does not preclude all of the  
27 parties to this Order from entering into any stipulation (in writing or on the record)  
28 constituting a modification of this Order. On any motion seeking disclosures

1 beyond those authorized by this Order, the burden will be on the Receiving Party  
2 to justify the disclosure.

3 **20. DISCOVERY FROM THIRD PARTIES.**

4 If discovery is sought of a person not a party to this action ("third party")  
5 requiring disclosure of such third party's Designated Material, the Designated  
6 Material disclosed by any such third party will be accorded the same protection as  
7 the parties' Designated Material, and will be subject to the same procedures as  
8 those governing disclosure of the parties' Designated Material pursuant to this  
9 Order.

10 **21. ADMISSIBILITY.**

11 Nothing herein shall be construed to affect in any way the evidentiary  
12 admissibility of any document, testimony, or other matter at any court proceeding  
13 related to this matter. The marking of Designated Material as CONFIDENTIAL  
14 INFORMATION or ATTORNEYS' EYES ONLY INFORMATION pursuant to  
15 this Order shall not, for that reason alone, bar its introduction or use at any court  
16 proceeding related to this matter pursuant to such terms and conditions as the Court  
17 may deem appropriate, consistent with the need for a complete and accurate record  
18 of the proceedings; provided, however, that every effort shall be made, through the  
19 use of procedures agreed upon by the parties or otherwise, to preserve the  
20 confidentiality of Designated Material marked as CONFIDENTIAL  
21 INFORMATION or ATTORNEYS' EYES ONLY INFORMATION.

22 **22. NON-PARTY REQUEST/SUBPOENA OF DESIGNATED  
23 MATERIAL.**

24 If a Receiving Party receives a subpoena or other compulsory process from a  
25 non-party to this lawsuit, seeking production or other disclosure of a Producing  
26 Party's Designated Material, that Receiving Party shall give written notice to  
27 outside counsel of record for the Producing Party within ten (10) calendar days  
28 after receipt of the subpoena or other compulsory process identifying the specific

1 Designated Material sought and enclosing a copy of the subpoena or other  
2 compulsory process. If the Producing Party timely seeks a protective order, the  
3 Receiving Party to whom the subpoena or other compulsory process was issued or  
4 served shall not produce the Designated Material requested prior to receiving a  
5 Court order or consent of the Producing Party. In the event that Designated  
6 Material is produced to the non-party, such material shall be treated as Designated  
7 Material pursuant to this Order.

8 **23. UNINTENTIONAL DISCLOSURE OF DESIGNATED  
9 MATERIAL.**

10 If Designated Material, or any portion thereof, is disclosed by the Receiving  
11 Party, through inadvertence or otherwise, to any person or party not authorized  
12 under this Protective Order, then the Receiving Party shall use its best efforts to  
13 retrieve immediately all copies of such Designated Material, and to bind such  
14 person to the terms of this Order. In such event, the Receiving Party shall also (a)  
15 promptly inform such person of all the provisions of this Order; (b) identify such  
16 person immediately to the Producing Party; and (c) request such person to execute  
17 the Acknowledgment of Protective Order in the form shown in Exhibit A.

18 **24. COUNSEL'S RIGHT TO PROVIDE ADVICE.**

19 Nothing in this Order shall bar or otherwise restrict any counsel herein from  
20 rendering advice to the counsel's party-client with respect to this action, and in the  
21 course thereof, relying upon an examination of Designated Material, provided,  
22 however, that in rendering such advice and in otherwise communicating with the  
23 party-client, the counsel shall not disclose any Designated Material, nor the source  
24 of any Designated Material, to anyone not authorized to receive such Designated  
25 Material pursuant to the terms of this Order.

26 **25. NO CONTRACT.**

27 To the extent that the parties have agreed on the terms of this Order, such  
28 stipulation is for the Court's consideration and approval as an order. The parties'

1 stipulation shall not be construed to create a contract between the parties or  
2 between the parties and their respective counsel.

3 **26. EFFECTIVE DATE.**

4 This Order shall be effective on the date of its execution, provided that all  
5 material previously produced shall be deemed ATTORNEYS' EYES ONLY  
6 INFORMATION unless and until they are redesignated by the Producing Party or  
7 by further order of the Court.

8 **27. TERMINATION.**

9 The termination of this action shall not automatically terminate the  
10 effectiveness of this Order and persons subject to this Order shall be bound by the  
11 confidentiality obligations of this Order until the Producing Party agrees otherwise  
12 in writing or this Court (or any other court or competent jurisdiction) orders  
13 otherwise.

14 Respectfully submitted,

15 RUSS, AUGUST & KABAT

16 Dated: June 5, 2012

17 By: /s/ Irene Y. Lee

18 Larry C. Russ  
19 Irene Y. Lee  
20 *Attorneys for Plaintiff and  
21 Counterclaim Defendant Rock Fit, LLC*

22 Dated: June 5, 2012

23 By: /s/ Michael A. Tomasulo (by permission)

24 Michael A. Tomasulo  
25 Robert L. Kinder  
26 *Attorneys for Defendant and  
27 Counterclaimant J.C. PENNEY  
28 CORPORATION, INC.*

IT IS SO ORDERED.

Dated: JUNE 6, 2012



The Honorable Stephen V. Wilson  
United States District Judge

CHARLES F. EICK  
18 United States Magistrate Judge

1 EXHIBIT A

2 **ACKNOWLEDGEMENT OF PROTECTIVE ORDER**

3 I, \_\_\_\_\_, state that:

4 I have read and reviewed in its entirety the annexed Protective Order  
5 ("Protective Order") that has been signed and entered in the lawsuit before the  
6 United States District Court for the Central District of California, entitled *Rock Fit,*  
7 *LLC v. J.C. Penney Corporation, Inc.*, Case No. CV 11-6377 SVW (Ex).

8 I understand the terms of the Protective Order, and hereby agree to be bound  
9 by and comply with the terms of the Protective Order, and not to disseminate or  
10 disclose any information subject to the Protective Order that I review or about  
11 which I am told to any person, entity, party, or agency for any reason, except in  
12 accordance with the terms of the Protective Order.

13 I understand that contempt sanctions may be entered for violation of this  
14 Protective Order and further agree to submit to the jurisdiction of this Court for the  
15 purposes of enforcement of the terms of this Protective Order.

16 I declare under the penalty of perjury under the operating laws that the  
17 foregoing is true and correct.

18 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

19 \_\_\_\_\_ (Signature)

20 \_\_\_\_\_ (Typed or Printed Name)